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ATTORNEYS FOR APPELLEE:

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**IN THE
COURT OF APPEALS OF INDIANA**

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No. 57A03-0801-CR-10

APPEAL FROM THE NOBLE CIRCUIT COURT
The Honorable G. David Laur, Judge
Cause No. 57C01-0202-FB-11

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Michael R. Bryant (Bryant), appeals the trial court's revocation of his probation.

We affirm.

ISSUE

Bryant raises two issues on appeal, which we consolidate and restate as: Whether the trial court abused its discretion by finding that he violated the terms of his probation.

FACTS AND PROCEDURAL HISTORY

On October 24, 2002, the trial court found Bryant guilty of sexual misconduct with a minor, as a Class B felony, Ind. Code § 35-42-4-9(a)(1), and sentenced him to ten years, with the first six years executed and four years suspended to probation. On June 17, 2005, Bryant was released to probation under the conditions outlined in the State of Indiana Noble Circuit Court Order of Probation and the Special Conditions of Probation For Sex Offenders.

On March 21, 2007, Probation Officer Danyell J. Wagner (Officer Wagner) filed a Probation Violation Report alleging that Bryant had failed to register with the sex offender registry, report a change in address to his probation officer, pay \$200.00 in restitution, and attend his sex offender treatment program. Bryant admitted to committing the violations. On May 31, 2007, the trial court ordered Bryant to serve ninety-days in jail followed by a return to probation for the remainder of his suspended sentence.

Approximately six months later, on September 25, 2007, Officer Wagner filed a second Probation Violation Report. The report alleged that Bryant failed to maintain full-

time employment while on probation, pay \$200.00 in restitution, report a change in address to his probation officer, and inform all persons living at his place of residence that he is a convicted sex-offender. Additionally, the report alleged that Bryant has \$25.00 in unpaid user fees and \$20.00 unpaid urine drug screen fees. On December 19, 2008, the trial court held a fact-finding hearing on the probation violation and found that Bryant had violated the following probation terms and conditions:

1. Probation user late fees
2. Unpaid Urine test fees
3. When [sic] discussed unpaid fees, Defendant said he couldn't pay, as he was unemployed.
4. Defendant didn't maintain fulltime employment. Defendant didn't put forth effort to obtain employment. Said he was looking for work. Defendant has no disabilities.
5. Restitution is unpaid.
6. Sex offender terms violated:
 - a. Defendant didn't inform Bronson's mother that he was a sex offender while residing at 403 Red Oak Drive, Kendallville, Indiana.

(Appellant's App. p. 10). That same day, the trial court revoked Bryant's probation and ordered him to serve the remainder of his suspended sentence in the custody of the Indiana Department of Correction.

Bryant now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Bryant contends that the trial court abused its discretion in finding that he violated the terms of his probation. We review a trial court's decision to revoke probation under an abuse of discretion standard. *Jones v. State*, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). A probation revocation hearing is civil in nature, and the state need only prove the alleged violations by a preponderance of the evidence. *Brabandt v. State*, 797 N.E.2d 855, 860 (Ind. Ct. App. 2003). "Generally, violation of a single condition of probation is sufficient to revoke probation." *Id.* at 860-61 (quoting *Pittman v. State*, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001), *trans. denied*). On review, our court considers only the evidence most favorable to the judgment without reweighing that evidence or judging the credibility of witnesses. *Id.* at 861. If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. *Id.*

In this case, Bryant specifically makes four contentions. First, he alleges he did not receive notice of a condition of probation to pay user or drug screen fees. Second, he claims that the evidence was insufficient to establish that he failed to maintain full-time employment. Third, it was never a term of probation to pay restitution on or before a certain date. Fourth, Officer Wagner's testimony regarding Bryant's failure to inform those living at his residence that he was a sex offender was too vague and incomplete to constitute proof beyond a preponderance of the evidence.

We are perplexed by the State's treatment of this case. While Bryant sets out four arguments as to why the trial court abused its discretion, the State only responds to one: the violation of the probation condition requiring Bryant to inform those residing with him that he is a sex offender. The State ignores the issues regarding late payment of fees, full-time employment, and restitution. As such, Bryant only has to establish *prima facie* error to win reversal on those unaddressed issues. *Campbell v. State*, 732 N.E.2d 197, 208 n.7 (Ind. Ct. App. 2000).

Turning to the issue of Bryant's employment, one of the terms of the standard conditions of probation provides: "I will be employed full-time and support my dependents unless I am given permission by my probation officer or the court not to." (Appellant's App. p. 42). At trial, Officer Wagner testified that Bryant failed to uphold full-time employment. She stated specifically that:

[STATE]: [] [H]e was ordered as part of probation, to maintain, uh, full employment is that true?

[OFFICER WAGNER]: That's true.

[STATE]: Do you know whether he did that?

[OFFICER WAGNER]: He did not.

[STATE]: Okay. Do you know why he didn't?

[OFFICER WAGNER]: I believe he had a hard time finding employment. [] and then keeping employment so.

[STATE]: Well do you consider that he had a reasonable excuse then for not having full-time employment?

[OFFICER WAGNER]: No.

[STATE]: Why is that?

[OFFICER WAGNER]: Why do I think he doesn't have an excuse?

[STATE]: Yeah, do you have information as to why [] he did not maintain full employment as so that it would not be an excusable lack of employment?

[OFFICER WAGNER]: No, I just, he did not put forth the effort to find employment.

[STATE]: Okay. So you had discussed with him from time to time what he was doing about trying to find a job is that correct?

[OFFICER WAGNER]: Yes, at his...

[STATE]: (Interrupting) Were you even satisfied with what he was doing?

[OFFICER WAGNER]: No.

(Transcript pp. 19-20). As a result of this testimony, the trial court determined that Bryant had violated the term of probation requiring him to maintain full-time employment.

Bryant asks us to consider a good faith effort standard when reviewing his employment status on probation and refers to *Garrett v. State*, 680 N.E.2d 1 (Ind. Ct. App. 1997). In *Garrett*, the State sought to revoke Garrett's probation for failure to pay restitution or seek employment. *Id.* at 2. One of the terms of her probation was to "make a good faith effort to be employed or faithfully pursue a course of study or vocational training that will equip [her] for suitable employment." *Id.* at 3. Although Garrett failed to obtain employment while on probation, her two probation officers testified that she showed a willingness to work and that she had applied for various jobs in an effort to gain employment. *Id.* at 4. The *Garrett* court concluded that the State failed to prove that Garrett failed to make

a good faith effort to gain employment. *Id.* Here, Bryant’s circumstances do not warrant an application of *Garrett*. There is no evidence that Bryant applied for any jobs after his first probation violation, and Officer Wagner testified that he made no satisfactory effort to seek employment. Accordingly, we conclude that Bryant has failed to establish *prima facie* error regarding the trial court’s decision that he violated the term of his probation requiring him to be employed full-time.

Although Bryant vigorously contests other terms of his probation, a “violation of a *single condition of probation* is sufficient to revoke probation.” *Pittman*, 749 N.E.2d at 559 (emphasis added). We conclude that the trial court properly found that Bryant violated his probation.

CONCLUSION

We conclude that the trial court did not abuse its discretion by finding that Bryant violated the terms of his probation.

Affirmed.

BAKER, C.J., and ROBB, J., concur.